

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEYBANK, N.A.,

Plaintiff,

v.

GERARDO ADAM CAZAREZ
VALENZUELA, et al.,

Defendant.

CASE NO. C13-5621 RBL

ORDER GRANTING KEYBANK'S
MOTION FOR SUMMARY
JUDGMENT

[DKT. #19]

THIS MATTER is before the Court on Plaintiff Keybank's "Response to Motion to Dismiss and Cross Motion for Summary Judgment against Defendant Roberto Cazarez Valenzuela" [Dkt. #19]. KeyBank alleges that its former employee, Defendant Gerardo Adam Cazarez Valenzuela¹ stole \$4.3 million from its vault in Anchorage, and gave some \$500,000 of it to his brother, Defendant Roberto Cazarez Valenzuela. In this civil action, KeyBank seeks to recover the money.

¹KeyBank differentiates between the brothers by calling one "Roberto" and the other "Cazarez," which does not seem to add clarity. This Order will differentiate using the parties' first names—Roberto and Gerardo—for ease of reference.

Gerardo escaped to Mexico, where he was caught and convicted, and where he remains imprisoned. Gerardo's girlfriend, Defendant Bindas, accompanied him to Mexico but is apparently in Arizona. She has been served but has not appeared. [See Dkt. #25]. Roberto apparently lives in Lakewood, Washington.

KeyBank's Motion was triggered by Roberto's "Answer² to Initial Disclosures and Final Answer" [Dkt. #18], which claimed he had tendered repayment to KeyBank, though he did not include any actual money in his "tender." His Answer nevertheless asks the Court to consider the debt discharged:

I ask this honorable court to now close this case forever and block
KEYBANK and its directors to ever try to re-open it again.

[Dkt. #18]. KeyBank treats this as a Motion to Dismiss.

KeyBank's Motion points out that Roberto has not actually denied any of the claims in its Complaint, and that he has effectively admitted (by failing to deny) that he is in possession of the money. Roberto has not responded to the Motion.

KeyBank's Motion is meritorious, and Roberto has admitted as much by failing to Respond to it. LCR 7.

For the reasons articulated in it, KeyBank's Motion is GRANTED. It is entitled to judgment on its conversion and unjust enrichment claims as a matter of law, and Roberto's "tender" is not a defense as a matter of law.

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² Roberto also filed an earlier Answer, Dkt. #13, which similarly claimed that the debt had been discharged, and asked KeyBank to send him a receipt.

1 It is therefore ORDERED:

2 1. Roberto Cazarez Valenzuela's Motion to Dismiss is DENIED.

3 2. KeyBank's Motion for Summary Judgment [Dkt. #19] is GRANTED.

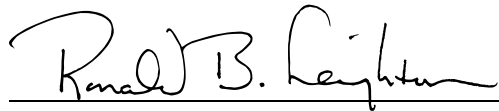
4 3. There is no just cause for delaying entry of judgment against Roberto Cazarez
5 Valenzuela on these claims.

6 4. KeyBank is awarded a Judgment against Roberto Cazarez Valenzuela for the
7 unpaid principal balance of \$500,000, plus interest at the statutory rate of 12% per annum from
8 July 30, 2011 through the date of judgment. The judgment shall bear post-judgment interest at
9 the statutory rate of 12% per annum on the declining balance from the date of entry of judgment
until paid in full. The Clerk is directed to enter such a judgment.

10 5. KeyBank may file a motion for the amount of attorneys' fees and costs against
11 Roberto Cazarez Valenzuela within 14 days of the judgment.

12 IT IS SO ORDERED.

13 Dated this 10th day of February, 2014.

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15 RONALD B. LEIGHTON
16 UNITED STATES DISTRICT JUDGE
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